BRIEF FOR RESPONDENTS GREENE AND KELLY IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 359

JOHN F. GRAHAM, *Petitioner*,

v.

THE HON. HAROLD H. GREENE,
THE HON. CATHERINE B. KELLY,
THE HON. TIMOTHY MURPHY,
DALE C. CAMERON, M. D.,
and
THE UNITED STATES OF AMERICA, *Respondents*.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS GREENE AND KELLY IN OPPOSITION

QUESTION PRESENTED

Were not respondents Greene and Kelly acting under color of their jurisdiction as Judges in the District of Columbia Court of General Sessions in committing petitioner to hospitals for mental examination and are they not, accordingly, immune from civil liability for their actions?

COUNTER-STATEMENT OF THE CASE

On May 24, 1967, petitioner instituted three related tort actions in the United States District Court for the District of Columbia; one against Dale C. Cameron, the Superintendent of Saint Elizabeths Hospital (Civil Action No. 1280–67); another against the United States of America (Civil Action No. 1283–67); and the third against District of Columbia Court of General Sessions Judges Harold H. Greene and Catherine B. Kelly, and then Assistant United States Attorney Tim Murphy (Civil Action No. 1279–67).[1] The actions stemmed from petitioner's arrest on charges of using the mails to send threatening communications (18 U.S.C. § 876) and his subsequent commitment, first to the District of Columbia General Hospital for mental observation to determine his competency to stand trial, and thereafter to Saint Elizabeths Hospital until such time as he was restored to competency to stand trial. *(United States* v. *John F. Graham,* Criminal Case No. 218–66.*)*

Introduction and Background

Petitioner's arrest and commitment for mental observation emanated from threats made by him after the marriage of his daughter, Sheryl, to one Herbert Gerald Hartman. These threats included letters to the young man's mother, Mrs. E. G. Hartman of Barstow, California, and to the young man's father, Mr. H. G. Carpenter of Louisville, Kentucky. To Mrs. Hartman, the mother, petitioner wrote: "It is beginning to look as if, in signing the marriage license application for Sheryl and your son, you signed your son's death warrant. I have written to Sheryl that if she does not start conforming to what her mother wants I fully intend to put a slug into your son.

[1] The office of the Corporation Counsel represents Judges Greene and Kelly only and for this reason will address itself to the petition for a writ of certiorari only as it affects these respondents.

Sheryl will tell you that I do not make rash threats * * *." Petitioner closed with the words: "If Sheryl is not out of Barstow by December 1, and at least 500 miles away from where you reside, your son, I assure you, will be living on borrowed time."

To Mr. Carpenter, the father, petitioner wrote: "It is a matter of great regret to me that Mrs. E. F. Hartman is proving so intractable that I may have to resort to violence. I cannot justifiably harm Mrs. Hartman, but I can shoot your son, which I am, if necessary, perfectly willing to do." He continued: "As Sheryl will tell you, I have both a long memory and considerable skill with a .38 revolver, and I also keep my promises."

In a communication dated November 12, 1965, to FBI Agent John Blazek, in which he enclosed copies of these threatening letters, petitioner stated: "I am not bluffing when I say that unless my daughter promptly conforms to her mother's dictates * * * I plan to put a slug into her husband." He ended his letter to Agent Blazek with the following statement:

> "I most certainly do not endorse personal violence, but I am quite willing to exercise it if the integrity of the family can be protected in no other way. The only antidote to personal violence is effective laws and in this area we definitely do not have them."

Petitioner's Arrest and Commitment for Mental Observation

On the basis of the communication of November 12, 1965, from petitioner to Agent Blazek and Agent Blazek's affidavit that he had received such communication, respondent Greene on November 30, 1965, issued a warrant for petitioner's arrest charging him with mailing threatening communications in violation of 18 U.S.C. § 876.

Pursuant to this warrant, petitioner was, that same day, arrested and brought before Judge Greene. After a hearing in open court at which petitioner was represented by appointed counsel, Judge Greene, on motion of the Government, ordered that petitioner be committed to the District of Columbia General Hospital pursuant to 24 D. C. Code, § 301(a), for a period of thirty days for mental observation to determine his competence to stand trial.

The Initial Competency Hearing

On December 30, 1965, and January 4, 1966, a lengthy competency hearing was held before General Sessions Judge Kelly. Doctors Luke F. Grande, Malcolm L. Meltzer and Sheldon Boruchow, of D. C. General Hospital, testified that petitioner was then incompetent to stand trial. Petitioner, represented by two appointed counsel, relied on the testimony of his wife and one Hazel Oldaker, described as a long time family friend, both of whom attested to his competence to stand trial. Petitioner himself also so testified. The Government put into evidence excerpts from several of the threatening letters written and sent by petitioner.

Judge Kelly found petitioner unable to understand the charges against him and incapable of participating in his own defense. Petitioner was ordered committed to Saint Elizabeths Hospital until such time as he was restored to mental competency to stand trial.

Further Proceedings in the Criminal Case

On May 16, and May 23, 1966, a second competency hearing was held in the United States District Court for the District of Columbia. At this hearing there was psychiatric testimony that petitioner's mental condition had improved substantially and that he was able to assist and cooperate in his defense. Petitioner was, accordingly,

found competent to stand trial. Petitioner was then, on May 23, 1966, arraigned, a trial date was set, and he was released on his own personal recognizance. Thereafter, on October 19, 1966, on oral motion of the Government, the indictment against the petitioner was dismissed.

Proceedings in District Court Tort Action

In his complaint in Civil Action No. 1279–67, petitioner alleged that, in committing him to the District of Columbia General Hospital, respondent Greene acted "wrongfully, wantonly, and maliciously." Petitioner made like allegations respecting his subsequent commitment to Saint Elizabeths Hospital by respondent Kelly, and sought damages in the amount of $450,000 from each respondent.

Respondents moved to dismiss the complaint. Petitioner opposed their motion and moved the court to enter summary judgment in his behalf. On September 22, 1967, the District Court entered an order granting respondents' motion to dismiss the complaint and denying petitioner's motion for summary judgment (Petitioner's appendix B–1). The United States Court of Appeals for the District of Columbia Circuit affirmed (Petitioner's appendix A). Petitioner thereafter filed in this Court a petition for a writ of certiorari.

ARGUMENT

Petitioner has failed to present any question of substance warranting the exercise of this Court's jurisdiction.

The record does not disclose any ground for review conceivably falling within the standards and considerations prescribed by Rule 19 of the Rules of this Court governing review on writ of certiorari. The case involves an action for damages against two judges of the District of Columbia Court of General Sessions for alleged wrongful acts in connection with the discharge of their judicial functions. In committing petitioner, first for mental exam-

ination, and thereafter on the ground that he was mentally incompetent to defend in a criminal prosecution, respondents Greene and Kelly acted pursuant to statutes of purely local application, namely, § 24–301(a), D. C. Code, 1967, and § 11–963(c), D. C. Code, 1967. (See appendix, *infra*, pp. 1a, 2a.) Such judicial actions were consistent with a long-standing practice engaged in throughout the years by Judges in the Court of General Sessions.[a]

The decision of the United States Court of Appeals for the District of Columbia Circuit affirming the District Court's ruling in favor of Judges Greene and Kelly accords with the decisions of this Court and with countless decisions of Circuit Courts of Appeals. These cases make it crystal clear that judges such as respondents are immune from civil actions for damages arising out of the performance of their official acts, without regard to the motives with which such acts were performed, as long as they act with some color of jurisdiction over the parties and subject matter. See *Pierson* v. *Ray*, 386 U. S. 547, 553–54 (1967); *Bradley* v. *Fisher*, 13 Wall. 335 (1872); cf. *Cooper* v. *O'Connor*, 69 App. D. C. 100, 99 F. 2d 135, 118 A. L. R. 1440 (1938); *Fletcher* v. *Wheat*, 69 App. D. C. 259, 100 F. 2d 432 (1938); *Spruill* v. *O'Toole*, 64 App. D. C. 85, 74 F. 2d 559 (1934); *Steinpreis* v. *Shook*, 377 F. 2d 282 (4th Cir., 1967); *Carmack* v. *Gibson*, 363 F. 2d 862 (5th Cir., 1966); *O'Bryan* v. *Chandler*, 352 F. 2d 987 (10th Cir., 1965); *Heasley* v. *Davis*, 342 F. 2d 786 (8th Cir., 1965); *Agnew* v. *Moody*, 330 F. 2d 868 (9th Cir., 1964); *Hurlburt* v. *Graham*, 323 F. 2d 723 (6th Cir., 1963); *Sires* v. *Cole*, 320 F. 2d 877 (9th Cir., 1963); *Meredith* v. *Van Oosterhout*, 287 F. 2d 216 (8th Cir.,

[a] From 1936 to 1962, 194 accused felons were committed by General Sessions Judges, under § 301(a), to Saint Elizabeths Hospital as incompetent to stand trial. See "Report of the Committee on Problems Connected with Mental Examinations of the Accused in Criminal Cases Before Trial," Judicial Conference of the District of Columbia Circuit, 1964, at 49.

1960); *Ryan* v. *Scoggin*, 245 F. 2d 54 (10th Cir., 1957); *Ray* v. *Huddleston*, 212 F. Supp. 343 (D. C. W. D. Ky., 1963), aff'd. 327 F. 2d 61 (6th Cir., 1964). The case, considered in light of this background, cannot be converted into a constitutional matter of a magnitude sufficient to warrant the exercise of this Court's jurisdiction.

CONCLUSION

Upon the foregoing it is respectfully submitted that the petition for a writ of certiorari should be denied.

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